

applicant's age at the time of the crime, and seriousness of the offense. There may also be exemptions for arrest/conviction usage. Washington, for example, exempts law enforcement agencies, state agencies, school districts, and organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, or other vulnerable adults.⁶²

Preemployment Inquiries

The term "preemployment inquiry" (PI), as used here, pertains to both content and method of assessment. Regarding content, PI refers to applicants' personal and background data. These data cover such areas as demographics (race, color, religion, national origin, and age), physical characteristics (disability, height, and weight), family and associates, residence, economic status, and education. The information could be gathered by any method; most frequently, it is gathered with an informal assessment method, particularly the application blank, biodata questionnaire, or preliminary interview. At times, PIs may also occur as part of an unstructured interview.

PIs have been singled out for particular legal (equal employment opportunity) and affirmative action (EEO/AAI) attention at both the federal and state levels. The reason for this is that PIs have great potential for use in a discriminatory manner early on in the selection process. Moreover, research continually finds that organizations make inappropriate and illegal PIs. One study, for example, found that out of 48 categories of application blank items, employers used an average of 5.4 inadvisable items on their application blanks for customer service jobs.⁶³ It is thus critical to understand the laws and regulations surrounding the use of PIs.

Federal Laws and Regulations

The laws and their interpretation indicate that it is illegal to use PI information that has a disparate impact based on a protected characteristic (race, color, etc.), unless such disparate impact can be shown to be job related and consistent with business necessity. The emphasis here is on the potentially illegal use of the information rather than on its collection per se.

EEOC Guide to Preemployment Inquiries. The EEOC guide provides the principles given above, along with specific guidance (dos and don'ts) on PIs regarding race, color, religion, sex, national origin, age, height and weight, marital status, number of children, provisions for child care, English language skill, education requirements, friends or relatives working for the employer, arrest records, conviction records, discharge from military service, citizenship, economic status, availability for work on weekends or holidays.

Americans With Disabilities Act Regulations. There appears to be a fine line between permissible and impermissible information that may be gathered between appropriate and inappropriate methods for gathering it, under the ADA.